the future estate in land have immediate and co-existent rights of action for infringements of the easements appurtenant, if damage has already been done thereby to each estate; and that under the New York decisions such damage has occurred in cases like the present, where the easement is impaired by an apparently permanent structure built after the creation of the particular estate.[12] From the application to these premises of the doctrine of "interruption" herein advocated, the recent decision obviously follows; for, as the tenant's inaction cannot affect the landlord's rights,[13] so, conversely, his objection to the infringement of his own right can in no way show non-acquiescence by the landlord in the impairment of the latter's co-existent but independent right to have the same easement undisturbed. In England, however, the Prescription Act[14] seems to have so altered the common law conception of an "interruption"[15] that thereunder even a stranger may interrupt,[16] and a tenant's interruption would consequently conduce to the benefit of the landlord.[17]

ATTACHMENT OF ROLLING STOCK AND GARNISHMENT OF CARRIERS IN RELATION TO INTERSTATE COMMERCE. — If a state law amounts to a regulation of interstate commerce, and certainly if this regulation is contrary to the intent of Congress express or implied, the law is unconstitutional.[1] Under this principle a state law was recently held invalid in so far as it authorized the attachment of the rolling stock of a non-resident carrier and the garnishment of connecting carriers owing freight collections to the non-resident carrier. *Davis* v. *Cleveland, etc., Ry. Co.*, 146 Fed. Rep. 403 (Circ. Ct., N. D. Ia., W. D.). The cars attached were in the hands of the garnishees under the usual agreement to forward them to the destination of the freight and return them later to the owner. The court followed the only other cases which have considered the attachment law in relation to interstate commerce.[2] With one exception,[3] these cases do not expressly suggest that a domestic attachment of cars running on their own line would be unconstitutional though the cars were engaged in interstate business. They jump to a consideration of the extra burden upon the defendant of meeting a suit in a foreign jurisdiction, and the burden upon the garnisheed connecting carriers, with consequent discouraging effect upon the forwarding agreement, finding that the whole proceeding is contrary to the intent of Congress expressed in the statute[4] authorizing carriers in different states to arrange for continuous carriage.

This reasoning proceeds upon an infirm distinction. The line should be drawn not between the attachment of the cars of a resident or non-resident carrier, but between an attachment which directly prevents the delivery of in-

---

[12] See Thompson *v.* Manhattan Ry, Co., 130 N. Y. 360. See, also, Storms *v.* Manhattan Ry. Co., 178 N. Y. 493, and cases cited.

[13] See Angell, Adverse Enjoyment, 46–60.

[14] 2 & 3 Wm. IV, c. 71.

[15] See Goddard, Easements, 6 ed., 266–270.

[16] Davies *v.* Williams, 16 Q. B. 546.

[17] See Clayton *v.* Corby, 2 G. & D. 174, 182.

[1] See Cooley *v.* The Board of Wardens, 12 How. (U. S.) 299.

[2] See Michigan Central Ry. Co. *v.* Chicago, etc., Ry. Co., 1 Ill. App. 399; Wall *v.* N. & W. R. R. Co., 52 W. Va. 485; Connery *v.* Quincy, etc., Ry. Co., 92 Minn. 20.

[3] See Wall *v.* N. & W. R. R., *supra.*

[4] U. S. Rev. Stat. § 5258.

terstate freight in the cars and one which does not. The garnishment certainly, and the attachment in so far as it does not tie up interstate freight, do not amount to regulations of interstate commerce at all. Their real and proper purpose is to secure the payment of debts, and they affect only indirectly interstate commerce. In this respect they are like a law taxing rolling stock,[5] which is not considered a regulation of interstate commerce when a domestic interstate carrier is taxed, and does not become so, by reason of the indirect effect upon forwarding agreements, when cars which have gained a situs in another state are taxed there.

But an attachment, whether of cars of a resident or non-resident carrier, which directly stops the delivery of interstate freight is very different. Though aimed to secure debts, it has a direct effect upon articles of interstate commerce not connected with the debt. In that way it is as objectionable as a law which, to exclude diseased cattle from a state, orders all cattle excluded,[6] or one which, to restrict pauper immigrants, orders all immigrants taxed.[7] An attachment of this nature may be said to regulate interstate commerce. Moreover, as a regulation, it is clearly contrary to the intent of Congress; for it would either greatly delay or cause the trans-shipment of interstate freight, — just those inconveniences which the federal statute authorizing arrangements for continuous carriage[4] was passed to avoid. It is curious that the cases of domestic attachment have not noticed the possibility that it, as well as foreign attachment, may often affect interstate commerce.[8] An analogy for the difference between an attachment which directly ties up interstate freight and one which does not may perhaps be found in cases which hold that there may be a valid attachment of a mail boat while the mail is not on board;[9] but not of a mail wagon which is in actual use.[10]

DUE PROCESS OF LAW IN THE COLLECTION OF TAXES. — Tax assessments and collections are seldom made by the regular courts, but by bodies deriving their power from variously framed statutes. As a general rule, due process of law in this connection has only two requirements, aside from the general requirement of jurisdiction: there must be notice of some sort, and there must be a right to a hearing at some stage of the proceedings and before a body capable of giving relief. Other things are matters of procedure. But this rule is open to exception in one class of cases, where the tax is assessed by mere calculation not involving discretion or judgment, as for example a sewer tax assessed according to the area of the land,[1] or a poll tax or license.[2] Whether the statute which establishes the tax, or some other statute on ordinance, provides for notice and hearing for the correction of errors, is not material. Either affords due process.[3] The notice may be merely constructive,[4] not personal, and the hearing need not be

---

[5] See 20 HARV. L. REV. 138.
[6] See Railroad Co. *v.* Husen, 95 U. S. 465.
[7] See Henderson *v.* Mayor of New York, 92 U. S. 259.
[8] See Boston, etc., R. R. Co. *v.* Gilmore, 37 N. H. 410.
[9] Parker *v.* Porter, 6 La. 169.
[10] Harmon *v.* Moore, 59 Me. 428.

[1] Gillette *v.* City of Denver, 21 Fed. Rep. 822.
[2] See Hagar *v.* Reclamation Dist., 111 U. S. 701, 709.
[3] Spencer *v.* Merchant, 125 U. S. 345; Hodge *v.* Muscatine Co., 196 U. S. 276.
[4] Bells Gap Ry. *v.* Pennsylvania, 134 U. S. 232.